

# Weekly Alert

## 2021 ISSUE 51

## RSM TAX ADVISORY (HONG KONG) LIMITED

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Welcome to 2021 issue 51 of Weekly Alert covering technical development in taxation around the globe.

### TAX - International

#### 1. ATO finalised R&D tax offset guidance

On 23 December 2021, the Australian Tax Office (“ATO”) clarified their guidance on R&D Tax Incentive (“Tax Incentive”) with the release of the finalised Ruling on the application of the ‘at risk’ rule and a Determination on notional deductions for R&D activities subsidised by JobKeeper payments.

The Tax Incentive is designed to encourage more companies to engage in R&D. It allows companies to claim a tax offset for eligible R&D expenditure via their annual company income tax return. Smaller companies may claim the R&D tax incentive as a refundable tax offset.

However, claims for R&D tax offsets may be denied or reduced where the R&D expenditure does not satisfy the ‘at-risk’ rule. In addition, the Ruling clarifies when an R&D entity would trigger the ‘at-risk’ rule and cannot notionally deduct all or part of its wage expenditure for having received a JobKeeper payment. Expenditure incurs on R&D activities that cannot be notionally deducted does not give rise to an R&D tax offset.

#### R&D tax offset guidance finalised

<https://www.ato.gov.au/Business/Business-bulletins-newsroom/General/R-D-tax-offset-guidance-finalised/>

#### 2. The ATO updated the approach in determining tax residency status in Australia for foreign incorporated companies

On 17 December 2021, the ATO published updates on residency criteria for Australian tax purposes relating to different types of taxpayers, including:

- Sole traders and ordinary partnerships
- Companies
- COVID-19 effects on foreign incorporated companies
- Corporate limited partnerships
- Trusts.

In particular, the ATO announced updates on the following measures related to the effects of COVID-19:

- Extended transitional period for foreign-incorporated companies with respect to central management and control test of residency; and
- Expiration of special approach for determining the existence of permanent establishment in Australia for foreign-incorporate companies.

#### **Working out your residency**

<https://www.ato.gov.au/Business/International-tax-for-business/Working-out-your-residency/>

### **3. Pillar Two model rules for domestic implementation released**

On 20 December 2021, the OECD published detailed rules to assist in the implementation of a landmark reform to the international tax system, which will ensure multinational enterprises (“MNEs”) will be subject to a minimum 15% tax rate from 2023.

The new Pillar Two model rules will assist countries in bringing the so-called Global Anti-Base Erosion rules into domestic legislation in 2022. They also address the treatment of acquisitions and disposals of group members and include specific rules to deal with particular holding structures and tax neutrality regimes. Finally, the rules address administrative aspects, including information filing requirements, and provide transitional rules for MNEs that become subject to the global minimum tax.

The full text of the model rules, including an overview, FAQs, and fact sheets on the application of the rules, are available on <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>.

#### **OECD releases Pillar Two model rules for domestic implementation of 15% global minimum tax**

<https://www.oecd.org/tax/oecd-releases-pillar-two-model-rules-for-domestic-implementation-of-15-percent-global-minimum-tax.htm>

## RSM Tax Advisory (Hong Kong) Limited

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- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities.
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures.
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings.
- Act as client representative in tax audits and tax investigations.
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services.
- Provide tax expert witness services at Courts.
- Act as tax advisor on transfer pricing and tax compliance reviews for IPO applications.
- Advise on human resources and structuring employment arrangements in a tax-efficient manner.
- Advise on tax equalization schemes.
- Provide tax compliance services for individual and corporate clients in Hong Kong and China.

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